



IDL ADMINISTRATIVE RULES AND NEGOTIATED RULEMAKING

[ARCHIVE DOCUMENT]

Negotiated Rulemaking - Current Items

Background

The extensive changes to the Lake Protection Rules (IDAPA 20.03.04) and the Submerged Leasing Rules (IDAPA 20.03.17) approved in 2008 have been in effect for approximately one year. Most of the changes have been implemented smoothly. Some of the feedback from the public and the permittees suggests that further clarifications and corrections are needed in a few sections. As a result, the Department is conducting another negotiated rulemaking during the summer of 2009. The changes are not very extensive, so we anticipate fewer meetings than in 2007.

In addition to clarifying and correcting the rules, the Department would also like to remove the fee amounts from the rules and allow the Land Board to set the fees subject to the maximum fees in Idaho Code § 47-13.

Since parts of IDAPA 20.03.04 and 20.03.17 overlap and affect many of the same users, the Department is undertaking a joint rulemaking. This will be more efficient for all who are involved in the rulemaking.

On April 21, 2009 the Department presented the State Board of Land Commissioners with preliminary draft rules changes and requested approval to proceed with negotiated rulemaking. The Board gave their approval to start negotiated rulemaking for IDAPA 20.03.04 and 20.03.17. The preliminary draft rule changes are only the starting point of the negotiated rulemaking.

Open House

An informal open house was held on May 20, 2009. All locations are listed below:

[Idaho Department of Lands, 3563 Ririe Highway, Idaho Falls](#)
[Idaho Department of Lands, 324 South 417 East, Highway 93 Business Park, Jerome](#)
[Idaho Department of Lands, 300 N. 6th St., Suite 103, Boise](#)
[Idaho Department of Lands, 555 Deinhard Lane, McCall](#)
[Idaho Department of Lands, 3780 Industrial Ave S., Coeur d'Alene](#)
[Idaho Department of Lands, 2550 Highway 2 West, Sandpoint](#)



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One purpose of this open house was to introduce the proposed changes to those who will be most affected by them. We also answered general questions from the public concerning the draft rule changes. The open house was conducted as a web conference. The locations outside Boise had difficulty hearing the remarks from Boise. We apologize for the lack of clear audio. As was promised, a list of the questions asked and the answers given is attached below.

[Questions from the May 20, 2009 Open House](#)

We thank those that attended in Boise and our other locations.

Negotiated Rulemaking

Negotiated rulemaking was conducted in Coeur d'Alene over three sessions in June. A Notice of Proposed Rulemaking was also published in the July 1, 2009 Administrative Bulletin. Participants were notified that negotiations needed to end by July 24 in order to meet the rulemaking deadlines. Comments regarding the rules were not received between July 1 and July 24, so no further negotiations were scheduled.

Summaries of the negotiation sessions are available below:

- [June 16 Negotiated Rulemaking \(PDF\)](#)
- [June 23 Negotiated Rulemaking \(PDF\)](#)
- [June 30 Negotiated Rulemaking \(PDF\)](#)

Thank you to everyone who participated in these negotiations. Your participation was an important contribution to improving the rules.

Plumbing standards for float homes were added to the rules in July after consulting with two plumbing contractors. An email update was sent out to solicit comments on the standards. No comments were received on the plumbing standards.

A legal review by the Department's Deputy Attorney General required a few more minor changes in late July. The Lake Specific Encroachment Standards required the most change. None of these changes appeared to be substantive with respect to the topics that were discussed during the negotiations.



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Proposed revisions to the procedures manual were discussed during the rulemaking negotiations. The final revisions can be viewed below and will be implemented soon. Please note that these changes refer to the existing rules. If the Proposed Rules become effective in 2010, then the procedures manual will require several more changes to help implement the new rules.

[Procedure Changes](#)

Proposed Rulemaking

The Department received approval by the State Land Board on August 18, 2009 to proceed with Proposed Rulemaking. The rules presented to the Land Board are available below. Changes are displayed in ~~strikeout~~ and underline.

[20.03.04 Proposed Rule \(Lake Protection Rules\)](#)

[Table of proposed changes to 20.03.04](#)

[20.03.17 Proposed Rule \(Submerged Leasing Rules\)](#)

[Table of proposed changes to 20.03.17](#)

Comments received prior to the Land Board meeting indicate that grandfather rights, minor permit modifications, boat lifts and tubular frames for slip covers continue to be issues of concern for some rulemaking participants. Statutory changes would be required to address grandfather rights, which is beyond the scope and ability of the rulemaking process. The other issues are briefly covered in the June 30, 2009 Negotiated Rulemaking description, and the Department is willing to discuss these issues further.

The Proposed Rule will be published in the October 7, 2009 Administrative Bulletin. A public comment period will run through October 28, 2009. Written comments on the rules may be submitted at any time through October 28, 2009. The Department may also offer written comments on the rules. A public hearing is scheduled for Coeur d'Alene on October 15, 2009 at the Department's Coeur d'Alene Staff Office (3780 Industrial Avenue South). The hearing will be from 8:00 a.m. to 12:00 p.m. The purpose of the hearing is to gather public comments on the Proposed Rules. As described in Title 67, Chapter 52, Idaho Code, Section 67-5222, the hearing is only for oral presentation. Negotiations may not occur during this hearing. IDAPA



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20.01.01.831 does provide for separate, informal meetings that allow the agency to explain the rules. Please contact Eric Wilson (information below) for further information.

At the end of the comment period, the Department will review all the submitted comments and the transcript of the public hearing. Changes may be made to the proposed rules in response to written or oral testimony. The rules will then be presented to the Land Board again in November 2009 for permission to advance to the Pending Rulemaking stage.

Pending Rulemaking and Legislative Approval

If the Land Board approves the Department's Pending Rules, they will be submitted to the 2010 legislative session for approval. The Legislature may not change the wording in the Pending Rules due to a separation of powers issue. The Legislature may only delete sections or approve them in total. As fee rules, they must be specifically approved by the Legislature. If approved, they will take effect upon adjournment of the 2010 Legislature.

Rulemaking Updates and More Information on Rulemaking

An email list of interested parties will be used to help keep the interested parties informed on the rulemaking progress. Please check this website regularly for updates.

Download the Rule Writer's Manual from the Department of Administration:

http://adm.idaho.gov/adminrules/bulletin/rule_draftmanual.pdf

Where to Send Comments

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